

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

JAMAAL RUSS

Plaintiff,

-against-

DARRELL CHAVERS,

Defendant.

**DEFENDANT'S  
STATEMENT PURSUANT  
TO LOCAL CIVIL RULE 56.1**

10 CV 1370 (SLT)(JO)

Defendant Detective Darrell Chavers submits this statement pursuant to Local Civil Rule 56.1 of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, to set forth the material facts as to which he contends there is no genuine issue to be tried:

1. Plaintiff Jamaal Russ commenced this action on or about March 24, 2010 against John Does 1-3. (See Court Docket Sheet, annexed to the Declaration of Joshua J. Lax in Support of Defendant's Motion for Summary Judgment (hereinafter "Lax Decl.") as Exhibit "A," at Docket Entry No. 1).
2. The Complaint alleges, inter alia, claims for false arrest and malicious prosecution stemming from plaintiff's March 15, 2008 arrest in connection with a shooting, and his subsequent prosecution. Plaintiff was ultimately acquitted on March 20, 2009. (See Complaint, annexed to Lax Decl. as Exhibit "B").
3. On April 19, 2011, Detective Darrell Chavers was added as defendant by order of the Court. (See Ex. A at Docket Entry No. 24).

4. Defendant Chavers submitted an answer to the initial Complaint on or about August 4, 2011. (Id. at Docket Entry No. 33).
5. On or about August 29, 2011, plaintiff filed a Amended Complaint Interlocutory Written Narrative Statement ("Amended Complaint") seeking to add Charles J. Hynes, Joshua Charlton, Katherine Teitgen, Alyshea Austern, Ray Kelly, New York City Police Department, District Attorneys' Office of Kings County, State of NY, City of New York, and State of New York as defendants. (Id. at Docket Entry No. 36).
6. On January 19, 2012, the Court denied plaintiff's motion to file his Amended Complaint. (Id. at Docket Entry No. 51).
7. On August 22, 2007, a man named Tyrone Jordan was shot one time in the abdomen in front of 315 Sutter Avenue in Brooklyn. (See Omniform System Complaint Report dated August 22, 2007, annexed to Lax Decl. as Exhibit "C").
8. Detective Darrell Chavers responded to the scene of the shooting where a shell casing and fragment of a bullet were found. (See Complaint Follow-Up Report DD5 (hereinafter "DD5") No. 3, dated August 23, 2007, annexed to Lax Decl. as Exhibit "D").
9. On August 22, 2007, Detective Chavers went to Brookdale Hospital and interviewed the shooting victim, Tyrone Jordan. (See DD5 No. 4, dated August 23, 2007, annexed to Lax Decl. as Exhibit "E").
10. Jordan said a dark-skinned male with a blue hoody named "Black" shot him, and that he believes "Black" resides at 301 Sutter Avenue. (Id.).

11. When asked why he was shot, Jordan explained that the other buildings in the area were feuding. (Id.).
12. Later that same day, Detective Chavers interviewed an eyewitness to the shooting, Broderick Nesbitt. (See DD5 No. 7, dated August 23, 2007, annexed to Lax Decl. as Exhibit "F").
13. Nesbitt said he saw "Black," wearing a blue hoody, come around the victim and shoot him. (Id.).
14. Nesbitt viewed a photographic array and identified the shooter as the individual in position 1 as "Black." (Id.).
15. The individual in position 1 was Jamal Russ. (See Photographic Line-Up, dated August 22, 2007, and Wanted Poster for Jamal Russ, annexed to Lax Decl. as Exhibit "G").
16. On August 23, 2007, Detective Chavers prepared an "I CARD" for plaintiff. (See DD5 No. 8, dated August 23, 2007, annexed to Lax Decl. as Exhibit "H").
17. On March 9, 2009, the Honorable John G. Ingram of the Supreme Court of New York conducted a Wade hearing regarding Nesbitt's identification of plaintiff. (See Hearing Sheet, dated March 9, 2009, annexed to the Lax Decl. at Exhibit "I").
18. At the hearing, the photo array where Nesbitt identified plaintiff was reviewed by the court and the court received testimony from Detective Chavers regarding the identification. (Id.).

19. Following the hearing, the Court found that Detective Chavers testified credibly regarding Nesbitt's identification, that Nesbitt told Detective Chavers he knew plaintiff and that Nesbitt knew plaintiff for a long time. (Id.).
20. On January 26, 2008, Detective Triscritti was informed by the Wanted Desk of the New York City Police Department that plaintiff had been arrested in Orange County for Criminal Impersonation. (See DD5 No. 13, dated January 28, 2008, annexed to Lax Decl. as Exhibit "J").
21. On January 28, 2008, Detective Chavers sent a letter to the Orange County Jail Records Unit requesting that they hold plaintiff if his Orange County case should be resolved. (See DD5 No. 14, dated January 28, 2008, annexed to Lax Decl. as Exhibit "K").
22. Plaintiff subsequently entered a guilty plea to the Orange County arrest and received a forty-five day jail sentence. (See Excerpts from the Deposition of Jamaal Russ taken February 23, 2012 (hereinafter "Pl's Dep."), annexed to Lax Decl. as Exhibit "L", at p. 131: 9-23.).
23. On March 4, 2008, plaintiff's parole was revoked based in part on the Orange County arrest and guilty plea. (See Parole Revocation Decision Notice, dated March 4, 2008, annexed to Lax Decl. as Exhibit "M").
24. Plaintiff received a time assessment of twelve months incarceration for the parole revocation. (Id.; see also, Pl's Dep. at pp. 131: 24-132: 2.).
25. Plaintiff served his sentence for the parole violation while awaiting trial for the Tyrone Jordan shooting case. (See Pl's Dep. at p. 132: 6-16.).

26. On March 13, 2008, Detective Chavers obtained a Complaint and Warrant for plaintiff's arrest warrant signed by the Honorable John H. Wilson in the New York City Criminal Court, Kings County,. (See, e.g., DD5 No. 16, dated March 14, 2008, annexed to Lax Decl. as Exhibit "N"; Arrest Warrant, dated March 13, 2008, annexed to Lax Decl. as Exhibit "O"; Criminal Complaint, dated March 13, 2008, annexed to Lax Decl. as Exhibit "P").
27. On March 14, 2008, plaintiff was arrested and transported from the Orange County Correctional Facility to the 73rd precinct for processing. (See DD5 No. 17, dated March 14, 2008, annexed to Lax Decl. as Exhibit "Q").
28. On March 20, 2008, the Grand Jury of Kings County voted to indict plaintiff for the shooting of Tyrone Jordan. (See Certification, dated March 20, 2008, annexed to Lax Decl. as Exhibit "R"; Indictment Number 2712/2008, annexed to Lax Decl. as Exhibit "S").
29. Plaintiff's criminal trial commenced on March 10, 2009. (See Criminal Trial minute summary sheet, annexed to Lax Decl. as Exhibit "T", at p. 1.).
30. Plaintiff was acquitted of all charged on March 20, 2009. (Id. at p. 8.).
31. Plaintiff has an older brother named Jamell Russ (See Pl's Dep. at pp. 9: 24-10: 8.).
32. Jamell is one year, one month and one day older than plaintiff. The two brothers look very similar and people mistake them for each other. (Id. at p. 57: 20-25).
33. Jamell is nicknamed "Black." (Id. at p. 58: 11-14.).

34. People well acquainted with plaintiff often confuse him for his brother, and he has been called Black by many people thinking plaintiff was his brother. (Id. at pp. 71:8-72:4).

35. Plaintiff would not be surprised if someone misidentified him as the shooter when it could have been plaintiff's brother who committed the shooting. (Id. at pp. 85: 23-86:6.).

Dated: July 11, 2012  
New York, New York

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